MICHAEL RAYMOND TAYLOR

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
FA CHUA J
[MAGISTRATE'S APPEAL NO. 33 OF 1988]
27 APRIL 1989

CRIMINAL PROCEDURE: *Charge under s. 402(1)(c) of the Companies Act (Cap 50) 1985 Rev Ed. - Whether in cases commenced by summons Magistrate has power to release the accused on bail under s. 351 of the Criminal Procedure Code (Cap 68).*

The appellant was served with summons issued by a Magistrate requiring him to attend Court to answer to two charges under s. 402(1)(c) of the Companies Act (Cap 50) 1985 Rev. Ed. The appellant pleaded not guilty and was released on bail of $150,000 in one surety. The appellant appealed against the Magistrate's order ordering him to furnish bail.

Held:

[1] Section 402(1)(c) Companies Act (Cap 50) 1985 Rev Ed. is a bailable offence.

[2] The Magistrate was correct in his view that a person who is served with a summons and in obedience thereto "appears" in Court within the meaning of s. 351 of the Criminal Procedure Code (Cap 68).

[Appeal dismissed.]

Cases referred to:

Ram Chandra v. State of Uttar Pradesh [1977] Cr LJ 1783
The State v. Santokh Singh [1960] AIR Punjab 31
R v. Tottenham Juvenile Court [1982] 2 All ER 321
Bhramar v. State of Orissa [1981] CLJ 1057
State v. Dallu Punja [1954] CLJ 1052
PP v. Manikya Rao [1959] AIR Andra Pradesh 639
Niranjan Singh v. Prabhakar Rajaram [1980] AIR SC 785
State of Uttar Pradesh v. Kailash [1955] AIR Allahabad 98
State of Gujarat v. Govindal [1966] AIR Gujarat 146

Legislation referred to:

Companies Act (Cap 50) [Sing] s. 402(1)(c)
Criminal Procedure Code (Cap 68) [Sing], s. 351

For the appellant - Warren Khoo (Tan May with him)
For the respondent - John Koh (Rosalind Laza with him)

JUDGMENT

FA Chua J:

The appellant Michael Raymond Taylor was served with a summons issued by a Magistrate on 11 January 1988, requiring him to attend Court on 18 January to answer to two charges under s. 402(1)(c) of the Companies Act (Cap 50) 1985 Rev. Ed.

On the return date of the summons the appellant appeared before a Magistrate. The charges were read to the appellant who pleaded not guilty. The proceedings were then adjourned for 3 weeks and the appellant was released on bail of $150,000 in one surety.

The appellant appealed against the Magistrate's order ordering him to furnish bail. At the conclusion of the hearing of the appeal I dismissed the appeal. I now give my reasons.

The main contention of the appellant is that the Magistrate has no power to require the appellant, who appeared before the Court on a summons, to furnish bail for his release.

This appeal concerns the Magistrate's jurisdiction over accused persons in cases commenced by summons, specifically the Magistrate's power to release the accused on bail under s. 351 of the Criminal Procedure Code (Cap 68) (the Code).

Section 351 of the Code provides when a person may be released on bail and it reads:

> 351(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by a police officer or appears or is brought before a Court and is prepared at any time while in the custody of the officer or at any stage of the proceedings before the Court to give bail, that person shall be released on bail by any police officer in such cases as are specified in orders issued by the Commissioner of Police or by that Court.
>
> (2) The police or the Court, if he or it thinks fit, may, instead of taking bail from that person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

It is clear from the last section of Schedule A to the Code headed "Offences Against Laws Other than the Penal Code" that for the offences with which the appellant is charged (1) that the police shall not arrest without a warrant; (2) that a summons shall ordinarily issue in the first instance; (3) that the offences are bailable of right.

In this case a summons was issued by the Magistrate in the first instance.

The arguments and submissions of Counsel for the appellant are these. It was left to the appellant to attend Court at the appointed date and time in obedience to the summons. The appellant, who had appeared in Court in obedience to the summons, does not come within any category of persons set out in s. 351 who is to be released on bail, after his appearance, by the Court. It is only if the appellant has failed to appear that the Magistrate may issue a warrant for his arrest under s. 54(b) of the Code and may endorse on the warrant a direction regarding the furnishing of bail.

It is submitted that there is no provision for sanction in s. 351 in the case of the person who "appears" before a Court who is not prepared to give bail. He, therefore, cannot be placed in custody but must be released. The liberty of the subject being the norm any restraint on it must be expressly provided for by law. There can be no question of a Magistrate having power by necessary implication to remand a person to custody. The Magistrate can remand a person to custody only when he has express power to do so (*Ram Chandra v. State of Uttar Pradesh* [1977] Cr LJ 1783, at p. 1787 para. 15).

The conception of "bail" is to set at liberty a person, arrested or imprisoned, on security being taken for his appearance in Court. It is submitted that a person who is under no previous restraint does not need any order of bail as he is free to move about as he likes.

Mr Khoo in support of his submissions cited a number of Indian cases.

To put it shortly Mr Khoo's argument is that as far as the appellant is concerned s. 351 is applicable only if he has been arrested or a warrant for his arrest has been issued.

So much for Mr Khoo's arguments and submissions.

The Magistrate was correct in his interpretation and application of Schedule A of the Code and was correct in holding that s. 402(1)(c) is a bailable offence. The appellant concedes that but submits that he was wrong in holding that because it was a "bailable offence" therefore s. 351 applied.

Section 351 covers several categories of persons. It applies to all cases of persons accused of bailable offences.

In *The State v. Santokh Singh* ([1960] AIR Punjab 31) the Court in dealing with s. 496 of the Indian Criminal Procedure Code (which is in *pari materia* with our s. 351) held (p. 31):

> Thus the substantive portion s. 496 applies to all persons except those accused of non-bailable offences. Furthermore, the provisions of this section are applicable not only to persons who are arrested or detained by an officer in charge of a police station, but also to persons who appear or are otherwise brought before a Court.

The contention of the appellant is that his appearance before the Court is not within the context of s. 351. He further argues that though he is entitled to bail, his release need not be secured by bail or personal bond.

The Magistrate was correct in his view that a person who is served with a summons and in obedience thereto "appears" in Court within the meaning of s. 351.

This construction is supported by a reading of the form of a summons, Form 1 of Schedule B, where the words used are "You are hereby required to **appear**". But in relation to the issuance of a warrant, Form 2 of Schedule B, the commissioner of police is directed "to arrest the said.... and **to produce him** before the Court."

Judicial interpretation of "appears" also supports the Magistrate's view that "appears" is "appears in answer to a summons" (see *R. v. Tottenham Juvenile Court* ([1982] 2 All ER 321)).

In *Bhramar v. State of Orissa* ([1981] Cri LJ 1057) P.K. Mohanti J referring to s. 437 of the Indian Criminal Procedure Code, when bail may be taken in case of non-bailable offence, stated (at p. 1059) that the expression "is brought before a Court" is used in relation to the issue of a warrant, while the expression "appears" is used in relation to the issue of a summons. A similar view was expressed in *State v. Dallu Punja* ([1954] Cri LJ 1052 at 1053).

It was held in *P.P. v. Manikya Rao* ([1959] AIR Andra Pradesh 639) that the words "is brought before a Court" involve the idea that the accused is produced before a Court and the word "appear" that the accused has surrendered himself in obedience to a process of Court. This would obviously include a summons.

Appearing before a Court in obedience to a process of the Court constitutes a form of restraint since his liberties are no longer unfettered.

In *Bhramar* (*supra*) P.K. Mohanti J said (p. 1059):

> A person knowing that a warrant or summons has been issued against him, may voluntarily surrender, and thus, submit himself to the jurisdiction of the Court. Evidently in such cases, the accused is under a restraint and he appears and moves for being enlarged on bail.

A person who "appears" before a Court in obedience to a summons surrenders himself to the custody of the Court. In *Niranjan Singh v. Prabhakar Rajaram* ([1980] AIR SC 785) the Supreme Court of India held that:

> Where the accused had appeared and surrendered before the Sessions Judge, the Judge would have jurisdiction to consider the bail application as the accused would be considered to have been in custody within meaning of s. 439. Custody, in the context of s. 439, is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court.
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> He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions.

It was held in *State of Uttar Pradesh v. Kailash* ([1955] AIR Allahabad 98 at 99) that when a person appears in Court, his very physical presence results in his placing himself in the custody of the Court.

The Magistrate, therefore, did not err in law when he held that:

> in the case of a person who appears in Court in obedience to a summons, his presence in Court places him in the jurisdiction of the Court...;

and that;

> It is my view that the accused in the present case was under a restraint as he had appeared before the Court in response to a summons which had been issued against him...

The appellant seeks to restrict the operation of s. 351 by confining the order of the Court to furnish bail only to persons who have been arrested or where a warrant for arrest has been issued. There is no express requirement that an arrest is a pre-condition for bail in bailable offences. This condition is inferred from the Indian cases relied upon by the appellant. No reliance can be placed on the dicta of the Indian cases that assume such a requirement.

Those Indian cases dealt with s. 438(1) of the Indian Criminal Procedure Code where it is provided that:

> 438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session...
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> for a direction under this section, and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail (anticipatory bail).

We do not have a similar provision in our Code.

The facts in those Indian cases were that the applicants under s. 438(1) had not been arrested but had reason to believe that they might be arrested on an accusation of having committed a non-bailable offence.

The preponderance of judicial opinion in India is in favour of the view that no such anticipatory bail could be granted. The reason is that it is implied in the very definition of the word "bail" that a person must be under some sort of restraint and the order of releasing a person on bail would set free a person who was under arrest, detention or under some kind of restraint by taking security for his appearance (see *State of Gujarat v. Govindal* ([1966] AIR Gujarat 146).

If it was intended that s. 351 should apply to bailable offences where arrest had been effected prior to his appearance in Court, then the legislature would not have employed the disjunctive word "or". If prior arrest was intended to be a necessary precondition then s. 351 should read:

> When any person other than a person accused of a non-bailable offence is arrested or detained without...
>
> a warrant by a police officer and appears and is brought before a Court...

Section 351 contains a few limbs. The relevant portion of the Section reads as follows:

> is arrested or detained without warrant by a police officer or appears or is brought before a Court....

The Magistrate gave the right construction by noting the use of the disjunctive "or" when he said in his grounds of decision:

> In my view, the employment of the word "or" in the quoted lines makes it clear that each limb must be read disjunctively so that this provision must be read as referring to a situation where a person is arrested without warrant or is detained, or a person who is served with a summons and in obedience thereto, "appears" in Court. He may also "appear" in Court after he has been arrested, where, after his arrest, he has been released on bail by the police. The word "appears", therefore will cover both the latter instances.

The Magistrate was right in his view that s. 351 of the Criminal Procedure Code (Cap 68), "does empower the Court, in order to secure the future attendance of a person who has appeared before it in obedience to a summons, ordering his appearance thereto, to order such a person to furnish bail. The Court's discretion to impose bail under s. 351 of the Criminal Procedure Code (Cap 68) should not be impeded simply on the ground that the offences were non-seizable (i.e. no arrest without warrant)".

The Magistrate has to exercise his discretion judicially. In my view he has properly exercised his discretion in the present case in requiring bail of $150,000 in one surety. A charge under s. 402(1)(c) of the Companies Act is a grave one. In this case it concerns furnishing misleading statements to the Securities Industry Council with intent to deceive. It carries a penalty of a fine not exceeding $10,000 or imprisonment for a term not exceeding 2 years or both. Furthermore the appellant is not a local citizen.

For these reasons the appeal was dismissed.

Also found at [1989] 2 CLJ 539